IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 30 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JADEJA CHATURBHA MOBATSANGJI
Versus
KHANDEKA BHACHU VIRA

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Appearance :
MR CH VORA for Appellant.
RULE SERVED for Respondent.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 20/07/2007

ORAL JUDGMENT

Heard learned advocate Mr. C.H. Vora for the

appellant.

By way of the present Second Appeal, the appellant, original defendant has challenged the judgment and order dated 2.01.90 passed by learned Assistant Judge, Kutch in Civil Regular Appeal No. 141 of 1984 confirming the judgment and order dated 20.10.84 passed by learned Civil Judge, J.D., Anjar, Kutch in Civil Suit No. 33 of 1980.

Short facts of the case are, the plaintiff filed a suit for possession of suit premises more particularly described in para 2 of the plaint from the defendant and also prayed for mesne profit for use and occupation by plaintiff by defendant from the date of the suit at the rate of Rs.15/- per month till realization of possession and costs of the suit.

The case of the plaintiff is that he is a resident of village Sugariya, Taluka Anjar-Kachchh and possess property in the said village but for the business of doing business, he is residing in village Koday of Mandvi Taluka. It is further the case of the plaintiff that property of one house of his ancestors is situated in Brahmin Falia of village Sugariya which includes one room and one kitchen facing east and an angana adjacent to the property. The situation of the property is described in the plaint. It is the case of the plaintiff that as he is residing at village Koday, he allowed defendant to use his house on friendly terms and accordingly the defendant is in possession of suit property. It is also the case of the plaintiff that due to heavy rain of the year before filing of the suit, the property suffered damage and defendant, taking benefit of his absence, attempted to

take damages for the damage caused to the suit house. On coming to know about the defendant's action to recover damages, he informed the authority not to grant any relief of damage to defendant. Since the intention of the defendant was found to be not bonafide, a notice was served on him on 29.12.2070 to which the defendant gave an evasive reply. It is further the case of the plaintiff that the suit property is situated in Brahmin Falia and surrounding houses are belonging to his caste brothers, i.e. Brahmins. It is further the case of the plaintiff that the property was of ownership of his grandfather Mayajar and his brother Kara Devkaran and since Kara Devkaran died without children, he is the only heir of the suit property. Since the defendant denied ownership of the plaintiff and did not vacate the premises, the plaintiff filed the present suit.

Defendant filed his written statement at Exh.21 and and contended that the suit property is his ancestral property and the plaintiff has no right, title or interest in it. He further contended that the suit property is in his possession since the time of his ancestor. He denied that the plaintiff has property in village Sugariya and suit property was given to him for use of friendly terms by plaintiff before 10 years. He further contended that as suit property suffered damage due to excess rain, he is entitled to relief for damage and he is the owner of the suit property. He further contended that the defendant took false objection and served notice on him which is replied by him. He denied that the suit property was of the ownership of grandfather of the plaintiff Mayajar and his brother Kara Devkaran. The defendant contended that the documents

produced by the plaintiff for the suit property is not pertaining tot he suit property. The defendant contended that the plaintiff not entitled for any mesne profit from the defendant for the suit property. He further contended that the suit property is having market price of more than Rs.15,000/- and plaintiff has not paid proper court fees for the suit. It was also contended that the suit was barred by limitation. The defendant therefore prayed to dismiss the suit and award compensatory costs of Rs.500/- to him.

After hearing the parties, the trial Court decreed the suit with costs and ordered the defendant to deliver possession of the suit property to the plaintiff within three months and directed the plaintiff to take separate action for mesne profit.

Aggrieved by the aforesaid judgment and decree, the original defendant preferred Civil Regular Appeal No. 141 of 1984 and after hearing the parties, the lower appellate court also dismissed the appeal.

The original defendant has therefore filed the present Second Appeal challenging the judgment and order dated 2.01.90 passed by learned Assistant Judge, Kutch in Civil Regular Appeal No. 141 of 1984 confirming the judgment and order dated 20.10.84 passed by learned Civil Judge, J.D., Anjar, Kutch in Civil Suit No. 33 of 1980.

By filing the present appeal, the appellant sought to raise the following questions:

(1). Whether the lower courts have erred in holding that

the suit property in question is a gokhru land property in spite of the fact that there is no pleading or oral evidence to that effect by the respondent plaintiff?

(2). Whether the lower courts have erred in holding that the plaintiff respondent has established his title and ownership with regard to the suit property?

(3). Whether the lower courts have erred in holding that the plaintiff respondent has established his title and ownership with regard to the suit property?

(4). Whether the lower courts have erred in holding that the present appellant defendant is a licence of the suit premises?

The grounds of objection to the decision appealed against are set out in detail at points No. (1) to (9) at pages 'C' and to 'E' of the paper book. I have gone through the said grounds minutely.

Having heard the learned advocate for the appellant and having gone through the record, the issues which are raised in the present appeal are not raised before the lower courts. Even otherwise there is a concurrent finding arrived at by the lower courts, and I see no reason to interfere with this concurrent finding of fact.

In the result, the appeal is dismissed.

[K.S. JHAVERI, J.]

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